



**MENDAKOTA CASUALTY COMPANY**  
(Serviced by KAI Advantage Auto, Inc.)  
**PERSONAL AUTOMOBILE INSURANCE POLICY**  
**ILLINOIS**

**IMPORTANT**

Notify the Company's claim office in Itasca, Illinois by telephone, of every accident however slight, immediately upon occurrence. Telephone 1-800-287-2741. You may also access our website at [www.kaiadvantage.com](http://www.kaiadvantage.com) to report a loss.

Delay in providing notice may jeopardize your claim rights. Send a completed written report as soon as practicable.

**PLEASE READ YOUR POLICY**

**NOTICE-** This policy has been issued based upon the reliance of your statements and representations on the application. **Read It Carefully** and notify the Company immediately of any misinformation or changes which may have occurred or may occur.

**Policy references as to parts and clauses relate to the similar references on the Declarations Page.**

Section 143c of the Illinois Insurance Code requires notification of the following addresses:

**Mendakota Casualty Company**  
**(Served by KAI Advantage Auto, Inc.)**  
**150 E. Pierce Road, Suite 600**  
**Itasca, IL 60143**

PERSONAL  
AUTOMOBILE  
INSURANCE  
POLICY  
PROVISIONS

**Mendakota Casualty Company**  
**Itasca, Illinois**

(A stock insurance company, herein called the Company)

agrees with the named insured, shown in the Declarations made a part hereof, in consideration of the payment of the premium and in reliance upon the statements and representations in the Application and subject to the Declarations and all of the terms of this policy:

**PART I – LIABILITY – COVERAGE A AND COVERAGE B**

**Coverage A - Bodily Injury Liability; Coverage B - Property Damage Liability.** To pay on behalf of the insured, but only to the extent of the applicable limits, all sums which the insured shall become legally obligated to pay as compensatory damages only and not for any punitive or exemplary damages because of:

- A. bodily injury, or
- B. property damage caused by accident arising out of the ownership, maintenance or use of the owned automobile or any non-owned automobile. Further, the Company shall defend any suit alleging such bodily injury or property damage covered under this policy seeking compensatory damages only and not seeking any punitive or exemplary damages which are payable under the terms of this policy with attorneys hired and paid by the Company, even if any of the allegations of the suit are groundless, false or fraudulent. However, the Company may make such investigation and settlement of any claim or suit as it deems expedient without admitting liability or waiving any of its rights that it may have under the terms of this policy.

It is understood and agreed the Company has no obligation to any insured after the applicable limits of the policy have been exhausted by payment for the accident which is the subject of the claims or suits. Further, the Company will no longer have any obligation at all to defend any claims or suits against any insured. It is further understood and agreed the Company is not obligated to pay, and shall not pay, attorney fees for any legal or investigative work unless such attorneys are specifically selected by the Company. It is further understood and agreed the Company is not obligated to pay, and shall not pay, any sum which the insured may be legally obligated to pay as a result of a lawsuit unless the Company received actual notice of said suit before any judgment had been entered in said suit.

**Supplementary Payments.** To pay, in addition to the applicable limits of liability:

- (a) all expenses incurred by the Company, all costs taxed against the insured in any such suit and all interest on the entire amount of any judgment therein which accrues after entry of the judgment and before the Company has paid or tendered or deposited in court that part of the judgment which does not exceed the limit of the Company's liability thereon;
- (b) premiums on appeal bonds required in any such suit, premiums on bonds to release attachments for an amount not in excess of the applicable limit of liability of this policy and the cost of bail bonds required of the insured because of accident or traffic law violation arising out of the use of an automobile insured hereunder, not to exceed \$100 per bail bond, but without any obligation to apply for or furnish any such bonds;
- (c) expenses incurred by the insured for such immediate medical and surgical relief to others as shall be imperative at the time of an accident involving an automobile insured hereunder;
- (d) all reasonable expenses, other than loss of earnings, incurred by the insured at the Company's request.

**Persons Insured.** The following are insureds under Part I:

- (a) With respect to the owned automobile;
  - (1) the named insured, or
  - (2) any other person using such automobile to whom the named insured has given permission, provided the use is within the scope of such permission;
- (b) With respect to a non-owned automobile;
  - (1) the named insured, provided the named insured

received the permission of its owner, and the use is within the scope of such permission, or

- (2) a relative, but only with respect to a private passenger automobile, provided the person using such automobile has received the permission of its owner and the use is within the scope of such permission;

(c) Any other person or organization legally responsible for the use of:

- (1) an owned automobile, or
- (2) a non-owned automobile, if such automobile is not owned or hired by such person or organization, provided the actual use thereof is by a person who is an insured under (a) or (b) above with respect to such owned automobile or non-owned automobile.

**Definitions.** Under Part I:

**"bodily injury"** means bodily injury to a person and sickness, disease or death which results from it; property damage means injury to or destruction of property including loss of use thereof;

**"spouse"** means a partner in marriage or a partner in a civil union;

**"named insured"** means the individual named in the Declarations and also includes his/her spouse, if a resident of the same household;

**"occupying"** means in or upon or entering into or alighting from;

**"Insured"** means a person or organization described under 'Persons Insured';

**"relative"** means a person related to the named insured or his/her spouse by blood, marriage or adoption and who is a resident of the same household as the named insured or spouse and is either a non-driver or is listed on the Application for this insurance as a driver, provided neither such relative nor his/her spouse owns a private passenger automobile;

**"owned automobile"** means:

- (a) a private passenger, farm, or utility automobile described in this policy.
- (b) a private passenger, farm or utility automobile, ownership of which is acquired by the named insured during the policy period provided:

- (1) the acquired automobile replaces an automobile described in this policy; neither the named insured nor any resident of his/her household retains ownership of the described replaced automobile, and the named insured notified the Company in writing, within 30 days after the date of acquisition of his/her decision to make this policy applicable to such acquired replacement automobile, or

- (2) the Company insures all private passenger, farm, and utility automobiles owned by the named insured on the date of such acquisition and the named insured notifies the company in writing within 30 days after the date of such acquisition of his/her decision to make this and no other policy issued by the Company applicable to such automobile;

**"temporary substitute automobile"** means an automobile rented to or leased by the named insured or any resident of the same household temporarily used as a substitute for the an owned automobile when said owned automobile has become inoperable because of breakdown, repair, servicing, loss or destruction;

**"non-owned automobile"** means (a) a private passenger, farm, or utility automobile not owned by or furnished for the regular use of either the named insured or any resident of the same household, while said automobile is in the possession or custody of the named insured or any resident of the same household or is being operated by him/her, and (b) a temporary substitute automobile;

**"private passenger automobile" or "automobile"** means a four wheel private

passenger, station wagon or jeep type automobile designed solely for public road use and designed solely to carry persons;

“**farm automobile**” means an automobile of the truck type with a load capacity of fifteen hundred pounds or less not used for business or commercial purposes other than farming;

“**utility automobile**” means an automobile, other than a farm automobile, with a load capacity of fifteen hundred pounds or less, of the pick-up body, sedan delivery or panel truck type not used for business or commercial purposes;

“**trailer**” means a trailer designed for use with a private passenger automobile, if not being used for business or commercial purposes with other than a private passenger, farm or utility automobile, or a farm wagon or farm implement while used with a farm automobile, and if not a home, office, store, display or passenger trailer;

“**automobile business**” means the business or occupation of selling, repairing, servicing, washing, storing or parking automobiles;

“**use**” of an automobile includes the loading and unloading thereof;

“**war**” means war, whether or not declared, civil war, insurrection, rebellion or revolution, or any act or condition incident to any of the foregoing.

**Exclusions.** This policy does not apply and does not provide coverage under Part I:

(a) to bodily injury or property damage to the named insured or any relative of the named insured related by blood, marriage or adoption residing in the same household as the insured. The term ‘insured’ as used in this exclusion means the person against whom the claim is made or suit is brought. This exclusion shall not apply when a third party acquires the right of contribution against a member of the injured person’s family;

(b) to any automobile while used for a delivery purpose during the course of business or for any other commercial purpose;

(c) to bodily injury or property damage which is either expected or intended by the insured;

(d) to bodily injury or property damage arising out of the operation of farm machinery;

(e) to bodily injury of any fellow employee of the insured injured in the course of his/her employment if such injury arises out of the maintenance or use of an automobile by another employee in the business of his/her employer, but this exclusion does not apply to the named insured with respect to injury sustained by any fellow employee;

(f) to bodily injury to any employee of the insured arising out of and in the course of his/her employment by the insured, but this exclusion does not apply to any such injury arising out of and in the course of domestic employment by the insured unless benefits are in whole or in part either payable or required to be provided under any worker’s compensation law;

(g) to an owned automobile while used in the automobile business;

(h) to a non-owned automobile while used (1) in the automobile business by the insured or (2) in any other business or occupation of the insured except a private passenger automobile operated or occupied by the named insured or by his private chauffeur or domestic servant, or a trailer used therewith;

(i) to injury to or destruction of (1) property owned or transported by the insured or (2) property rented to or in charge of the insured other than a residence or private garage or (3) property as to which the insured is for any purpose exercising physical control;

(j) to any automobile rented or leased by the insured where other valid and collectible coverage in the form of an insurance policy, bond or other security has been furnished to the insured in connection with such rental or lease;

(k) to bodily injury or property damage with respect to which an insured under this policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability;

(l) to any automobile designed for racing while being tested, repaired or serviced, or to any automobile while used, operated, manipulated or maintained in any prearranged or organized race or speed test, including “hot rod” or ‘stock car’ racing;

(m) to bodily injury or property damage due to war;

(n) to any automobile while being operated or used in the commission of a crime, other than a traffic violation;

(o) to any claim, suit, or separate count in any suit alleging punitive or exemplary damages or to the payment of any punitive or exemplary damages which

includes, but is not limited to, any award, finding, verdict or judgment of punitive or exemplary damages;

(p) while any automobile is pushing or pulling another automobile or vehicle or is being pushed or pulled by another automobile or vehicle except for a trailer rented by an insured;

(q) while any automobile is in the control of an excluded operator;

(r) to any automobile rented or leased to and operated by any other operator unauthorized or excluded under the terms of any rental or lease agreement;

(s) to any person using an automobile without a reasonable belief that the person is entitled to do so.

**Non-Owner’s Policy** - If this policy is written as a **Non-Owner Policy** as shown on the Declarations, it is agreed that such insurance as is afforded for Bodily Injury and Property Damage only applies with respect to the use of any “non-owned automobile” and not any “owned automobile” by the named insured and his/her spouse if a resident of the same household subject to the following provisions:

1. The definitions of “non-owned automobile” and “insured” are changed under this Part I to read: “non-owned automobile” means an automobile not owned by or furnished for the regular use of the named insured or his or her spouse or any other member of the household; “insured” means the named insured and his or her spouse.

2. This policy does not apply to any automobile owned by or furnished for the regular use of the named insured or his/her spouse or any relative. 3. This insurance shall be excess over any other valid and collectible insurance.

**Financial Responsibility Laws.** When this policy is certified as proof of financial responsibility for the future under the provisions of any motor vehicle financial responsibility law, such insurance as is afforded by the policy for bodily injury liability or for property damage liability shall comply with the provisions of such law to the extent of the coverage and limits of liability required by such law, but in no event in excess of the limits of liability stated in this policy. The insured agrees to reimburse the Company for any payment made by the Company which it would not have been obligated to make under the terms of this policy except for the agreement contained in this paragraph.

**Limits of Liability.** The limit of liability for this ‘Coverage A Bodily Injury Liability’ as stated in the Declarations as applicable to ‘each person is the maximum limit of the Company’s liability for all damages, including damages for care and loss of services and loss of consortium, arising out of bodily injury sustained by any one person as the result of any one accident. Subject to this limit for each person, the limit of liability as stated in the Declarations as applicable to each accident for this Coverage A Bodily Injury Liability’ is the maximum limit of the Company’s liability for all damages, including damages for care and loss of services and loss of consortium, arising out of bodily injury sustained by two or more persons as the result of any one accident. The limit of liability for this ‘Coverage B Property Damage Liability’ as stated in the Declarations as applicable to “each accident” is the maximum limit of the Company’s liability for all damages arising out of injury to or destruction of all property of one or more persons or organizations, including the loss of use thereof, as the result of any one accident. Therefore, these limits of liability for this “Coverage A Bodily Injury Liability” and for this “Coverage B Property Liability” are the most the Company will pay under each said coverage regardless of the number of:

(1) insureds;

(2) claims made or suits brought on account of bodily injury or property damage;

(3) automobiles or separated itemizations of premiums stated in the Declarations;

(4) automobiles involved in the accident.

The limits for any coverage for any automobile under this policy may not be aggregated with the limits for any similar coverage, whether provided by the Company or another insurer, applying to other motor vehicles, for purposes of determining the total limit of insurance coverage available for bodily injury suffered by a person in any one accident. Therefore, the total limit of liability under all the policies, whether provided by the Company or another insurer shall not exceed the highest applicable limit of liability under any one policy.

**Other Insurance.** If the insured has other insurance against a loss covered by Part I of this policy the Company shall not be liable under this policy for a greater proportion of such loss than the applicable limit of liability stated in the Declarations bears to the total applicable limit of liability of any valid and collectible insurance against such loss; provided, however, the insurance with respect to a temporary substitute automobile or non-owned automobile shall be excess insurance over any other valid and collectible insurance.

## PART II – UNINSURED MOTORIST COVERAGE

**D/D2 Uninsured Motorist Coverage.** To pay all sums which the insured or his/her legal representative shall be legally entitled to recover as compensatory damages only and not for any punitive or exemplary damages from the owner or operator of an uninsured motor vehicle because of property damage to an automobile described in the policy and bodily injury sustained by the insured, caused by accident and arising out of the ownership, maintenance or use of such uninsured motor vehicle, provided, for the purposes of this coverage, determination of whether the insured or such representative is legally entitled to recover such damages, and if so the amount thereof, shall be made by agreement between the insured or such representative and the Company or, if they fail to agree, by arbitration as herein provided. Recovery under this Part for "property damage" is subject to the payment of a specific separate premium for uninsured motorist property damage liability.

No judgment against any person or organization alleged to be legally responsible for the bodily injury or property damage shall be admissible in evidence or conclusive, as between the insured and the Company, of the issues of liability of such person or organization or of the amount of damages to which the insured is legally entitled unless such judgment is entered pursuant to an action prosecuted by the insured with the written consent of the Company.

**Definitions.** The definitions under Part I, except the definition of "insured", apply to Part II and under Part II:

**"Insured"** means:

- (a) the named insured and any relative of the named insured;
- (b) any other person while lawfully occupying an insured automobile;
- (C) any person, with respect to damages he/she is entitled to recover because of bodily injury to which this Part applies when sustained by an insured under (a) or (b) above.

**"insured automobile"** means:

- (a) an automobile described in the policy for which a specific premium charge indicates coverage is afforded;
- (b) an automobile, ownership of which is acquired by the named insured during the policy period, provided:
  - (1) the acquired automobile replaces an insured automobile defined in (a) above; neither the named insured nor any resident of his/her household retains ownership of the described replaced automobile; and the named insured notifies the Company in writing within 30 days after the date of said acquisition of his/her decision to make this policy applicable to such acquired replacement automobile; or
  - (2) the Company insures under this coverage all automobiles owned by the named insured on the date of such acquisition and the named insured notifies the Company in writing within 30 days after the date of such acquisition of his/her decision to make this and no other policy issued by the Company applicable to such automobile;
- (c) a temporary substitute automobile for an insured automobile as defined in (a) or (b) above, and
- (d) a non-owned automobile while being operated by the named insured, but shall not include:
  - (1) any automobile or trailer owned by a resident of the same household as the named insured;
  - (2) any automobile while used as a delivery or for any other commercial purpose; or
  - (3) any automobile while being used without the permission of the owner.

**"uninsured motor vehicle"** includes a trailer of any type and means:

- (a) a motor vehicle or trailer with respect to the ownership, maintenance or use for which, there is no bodily injury liability bond or insurance policy applicable at the time of the accident with respect to any person or organization legally responsible for the use of such motor vehicle, or said bond or insurance policy has limits less than required by the Illinois Financial Responsibility Law;
- (b) a hit-and-run motor vehicle;
- (c) a motor vehicle with respect to which there is a bodily injury liability insurance policy applicable at the time of the accident but the Company writing such policy is and is declared insolvent subsequent to the date of the accident. However the term "uninsured motor vehicle" does not include any vehicle or equipment:
  - (1) owned by or furnished or available for the regular use of an insured or a relative of the named insured who causes bodily injury or property damage in excess of the limit required under the Illinois Financial Responsibility Law;
  - (2) owned or operated by a self-insurer within the meaning of any motor vehicle financial responsibility law, motor carrier law or any similar or other law;
  - (3) owned by any governmental unit or agency;
  - (4) operated on rails or crawler-treads;
  - (5) designed for use principally off public roads while not upon public roads; or
  - (6) while located for use as a residence or premises and not as a vehicle.

**"hit-and-run motor vehicle"** means a motor vehicle which causes bodily injury to an insured arising out of physical contact, of such motor vehicle with the insured or with an automobile which the insured is occupying at the time of the accident, provided, (a) there cannot be ascertained the identity of either the operator or the owner of such 'hit-and-run motor vehicle'; and (b) the insured or someone on his/her behalf shall have reported the accident within 24 hours to a police, peace or judicial officer or to the Commissioner of Motor Vehicles, and shall have filed with the Company within 30 days thereafter a statement under oath that the insured or his/her legal representative has a cause or causes of action arising out of such accident for damages against a person or persons whose identity is unascertainable, and setting forth the facts in support thereof; and (c) at the Company's request, the insured or his/her legal representative makes available for inspection the motor vehicle which the insured was occupying at the time of the accident.

**"state"** includes the District of Columbia, any territory or possession of the United States, and any province of Canada.

**Non-Owner's Policy** - If this policy is written as a **Non-Owner Filing Policy** as shown on the Declarations, it is agreed that such insurance as is afforded for Bodily Injury and Property Damage only applies with respect to the use of any "non-owned automobile" and not any "owned automobile" by the named insured and his/her spouse if a resident of the same household subject to the following provisions:

1. The definitions of "non-owned automobile" and "insured" are changed under this Part II to read: "non-owned automobile" means an automobile not owned by or furnished for the regular use of the named insured or his or her spouse or any other member of the household; "insured" means the named insured and his or her spouse.
2. This policy does not apply to any automobile owned by or furnished for the regular use of the named insured or his/her spouse or any relative.
3. This insurance shall be excess over any other valid and collectible insurance.

**Exclusions.** This policy does not apply and does not provide coverage under this Part II-Uninsured Motorist Coverage:

- (a) to bodily injury or property damage to an insured with respect to which such insured, his/her legal representative or any person entitled to payment under this coverage shall, without written consent of the Company, make any settlement with any person or organization who may be legally liable therefore;
- (b) so as to inure directly or indirectly to the benefit of any worker's compensation or disability benefits carrier or any person or organization qualifying as a self-insurer under any worker's compensation or disability benefits law or any similar law;
- (c) to any claim alleging punitive or exemplary damages against the owner or operator of an uninsured motor vehicle or to the payment of any award, finding, verdict or judgment against the owner or operator of an uninsured motor vehicle for punitive or exemplary damages;
- (d) to property damage when the owned automobile has collision coverage or is described in any other policy of automobile insurance;
- (e) to bodily injury to any person while occupying any automobile not owned by, or furnished or available for the regular use of the named insured or any relative while such automobile is used as a public or livery conveyance for a fee; but this exclusion does not apply to:
  - (1) a share-the-expense car pool; or
  - (2) the named insured or any relative;
- (f) while any covered automobile is in the control of an excluded operator;
- (g) to any bodily injury or property damage which is either expected or intended by the insured;
- (h) to any insured while occupying a vehicle the insured owns which is insured for this Uninsured Motorist Coverage under another policy;
- (i) to bodily injury of an insured while occupying a motor vehicle owned by, or furnished or available for the regular use of the insured, a resident spouse or resident relative, if that motor vehicle is not described in this policy under which a claim is made or is not a newly acquired or replacement automobile covered under the terms of this policy;
- (j) if Underinsured Motorist Coverage applies to the accident;
- (k) to any person using an automobile without a reasonable belief that the person is entitled to do so.

**Limits of Liability.**

- (a) The limit of liability as stated in the Declarations for this "D/D2 Uninsured Motorist Coverage" as applicable to "each person" is the maximum limit of the Company's liability for all damages including damages for care and loss of services and loss of consortium arising out of bodily injury sustained by any one person as a result of any one accident. Subject to this limit for "each person", the

limit of liability as stated in the Declarations for this D/D2 Uninsured Motorist Coverage as applicable to "each accident" is the maximum limit of the Company's liability for all damages, including damages for care and loss of services and loss of consortium arising out of bodily injury sustained by two or more persons as a result of any one accident.

Therefore, these limits of liability for this "D/D2 Uninsured Motorist Coverage" are the most the Company will pay under this coverage regardless of the number of:

- (1) insureds;
- (2) claims made or suits brought on account of bodily injury or property damage;
- (3) automobiles or separated itemizations of premiums stated in the Declarations; or
- (4) automobiles involved in the accident.

The limits for any coverage for any automobile under this policy may not be aggregated with the limits for any similar coverage, whether provided by the Company or another insurer, applying to other motor vehicles, for purposes of determining the total limit of insurance coverage available for bodily injury suffered by a person in any one accident. Therefore, the total limit of liability under all the policies, whether provided by the Company or another insurer shall not exceed the highest applicable limit of liability under any one policy.

(b) Any amount payable under the terms of Part II because of bodily injury sustained in an accident by a person who is an insured under Part II shall be reduced by:

- (1) all sums paid for bodily injury by or on behalf of (i) the owner or operator of the uninsured automobile and (ii) any other person or organization jointly or severally liable together with such owner or operator for such bodily injury including all sums paid under Coverage A of Part I; and
- (2) the amount paid and the present value of all amounts payable for bodily injury under any worker's compensation law, disability benefits law or any similar law.

(c) Any payment made under Part II to or for any insured shall be applied in reduction of the amount for damages which the insured may be entitled to recover from any person under Coverage A of Part I.

(d) The Company shall not be obligated to pay under this coverage that part of the damages which the insured may be entitled to recover from the owner or operator of an uninsured motor vehicle which represents medical payments paid or payable under Part IV.

(e) Any amount payable under Part II shall be reduced by all sums paid to the insured for property damage on behalf of the owner or operator of the uninsured motor vehicle and any other person or organization jointly or severally liable together with such owner or operator.

(f) Property damage losses recoverable hereunder shall be limited to damages caused by the actual physical contact of an identifiable uninsured motor vehicle with the automobile described in the policy.

(g) There shall be no coverage for loss of use of the insured automobile and no coverage for loss or damage to personal property located in the insured automobile.

(h) There shall be no liability imposed under the Uninsured Motorist Property Damage Coverage if the owner or the operator of the at fault uninsured motor vehicle or hit-and-run motor vehicle cannot be identified.

**Other Insurance.** With respect to bodily injury to an insured while occupying an automobile not owned by the named insured, the insurance under Part II shall apply only as excess insurance over any other similar insurance available to such insured and applicable to such automobile as primary insurance, and this insurance shall then apply only in the amount by which the limits of liability for this coverage exceeds the applicable limit of liability of such other insurance.

Except as provided in the foregoing paragraph, if the insured has other similar insurance available to him/her and applicable to the accident, the damages shall be deemed not to exceed the higher of the applicable limits of liability of this insurance and such other insurance, and the Company shall not be liable for a greater proportion of any loss to which this coverage applies than the limit of liability hereunder bears to the sum of the applicable limits of liability of this

insurance and such other insurance.

**Arbitration.** If any person making claim hereunder and the Company do not agree that both the vehicle(s) and the driver(s) of the vehicle(s) with which any person making claim has had an accident, or do not agree that such person is legally entitled to recover damages from the owner or operator of an uninsured motor vehicle because of bodily injury to an insured or damage to an automobile described in the policy or do not agree as to the amount of damages payable hereunder, then these matters shall be submitted to arbitration. Upon the insured demanding arbitration and selecting an arbitrator as required under the terms hereof in writing, the Company shall select an arbitrator and the two arbitrators so named shall select a third arbitrator. If such arbitrators are not selected within 45 days from the receipt of such written request, either party may request the arbitration be submitted to the American Arbitration Association and be subject to its rules for the conduct of arbitration hearings as to all matters except medical opinions. The arbitrators shall then hear and determine the questions in dispute and except to the extent herein provided, the decision in writing of any two arbitrators shall be binding upon the parties. All arbitration hearings under this policy, including both the tripartite panel and the American Arbitration Association, shall be conducted in the County and State in which the insured resides and in accordance with the usual rules governing procedure and admission of evidence in courts of law of that County and not in accordance with any court mandated arbitration or mediation rules except as set forth in the Illinois Insurance Code, 215 ILCS 5/143a. It is agreed that the arbitrator(s) shall not enter an award in excess of the applicable policy limits, and, if an award is entered in excess of the applicable policy limits, that portion of the award which exceeds the policy limits is void and not binding on either the insured or the Company. Each party will pay the expenses it incurs for its attorney's fees and its witnesses' fees. Each party will pay the reasonable expense fees of its selected arbitrator and will share equally the reasonable fees of the third arbitrator.

Pursuant to the Illinois Insurance Code, 215 ILCS 5/143a(1). "Any decision by the arbitrators shall be binding for the amount of damages not exceeding \$75,000 for bodily injury to or death of any one person and \$150,000 for bodily injury to or death of 2 or more persons, or the corresponding policy limits for bodily injury or death, whichever is less."

**Trust Agreement.** In the event of payment to any person under Part II:

(a) the Company shall be entitled to the extent of such payment to the proceeds of any settlement or judgment resulting from the exercise of any rights of recovery of such person against any person or organization legally responsible for the property damage or bodily injury for which the payment is made, including the proceeds recoverable from the assets of any insolvent insurer;

(b) such person shall hold in trust for the benefit of the Company all rights of recovery which he/she shall have against any other person or organization because of the damages which are the subject of claim made under Part II;

(c) such person shall do whatever is proper to secure such rights and shall do nothing after loss to prejudice such rights;

(d) if requested in writing by the Company or its representative, such person shall take, through any representative designated by the Company, such actions as may be necessary or appropriate to recover such payment as damages from any other person or organization, such action to be taken in the name of such person; in the event of a recovery, the Company shall be reimbursed out of such recovery for expenses, costs and attorneys' fees incurred by it in connection therewith;

(e) such person shall execute and deliver to the Company such instruments and papers as may be appropriate to secure the rights and obligations of such person and the Company established by these provisions.

**Legal Action Against the Company Under This Part II.** No suit, action or arbitration proceedings for recovery of any claim may be brought against this Company until the insured has fully complied with all the terms of this policy. Further, any suit, action or arbitration will be barred unless commenced within two (2) years after the date of the accident. Arbitration proceedings will not commence until this Company receives at the same time (1) the insured's written demand for arbitration and (2) the insured's written selection of an arbitrator.

### PART III - UNDERINSURED MOTORIST COVERAGE

**E. Underinsured Motorist Coverage.** To pay all sums which an insured or his/her legal representative shall be legally entitled to recover as compensatory damages only and not for any punitive or exemplary damages from the owner or operator of an underinsured motor vehicle because of bodily injury sustained by an insured and caused by an accident arising out of the ownership, maintenance or use of the underinsured motor vehicle provided, for the purposes of this

coverage, determination as to whether the insured or his/her legal representative is legally entitled to recover such damages, and if so the amount thereof, shall be made by agreement between the insured and the Company or, if they fail to agree, by arbitration as herein provided. To pay under this coverage only after the limits of liability or portion thereof under all bodily injury liability insurance policies applicable to the underinsured motor vehicle and its operators have been partially

or fully exhausted by payment of judgment or settlement.

**Definitions.** The definitions under Part I apply to Part III and under Part III:

**"Underinsured motor vehicle"** means a land motor vehicle or trailer of any type to which a bodily injury liability bond or policy applies at the time of the accident but its limit for bodily injury liability is less than the limit of liability for this Underinsured Motorist Coverage.

However, "underinsured motor vehicle" does not include any vehicle or equipment:

- (1) owned by or furnished or available for the regular use of an insured or any relative of the named insured;
- (2) owned by any governmental unit or agency;
- (3) operated on rails or crawler treads;
- (4) designed for use principally off public roads while not upon public roads;
- (5) while located for use as a residence or premises and not as a vehicle;
- (6) owned or operated by a person qualifying as a self-insurer under any applicable motor vehicle law;
- (7) to which a bodily injury liability bond or policy applies at the time of the accident, but the bonding or insuring company denies coverage or is or becomes insolvent;
- (8) which is defined as an "uninsured motor vehicle" under Part 11 - UNINSURED MOTORIST COVERAGE;
- (9) which is insured under PART I LIABILITY Coverage A and Coverage B; or
- (10) to which a bodily injury liability bond or policy applies at the time of the accident but its limit for bodily injury liability is less than the minimum limit for bodily injury liability specified by the Financial Responsibility Law of Illinois.

**Exclusions.** This policy does not apply and does not provide coverage under this Underinsured Motorist Coverage - Part III:

- (a) to any person while occupying an automobile when it is being used to carry persons or property for a fee;
- (b) to any person using an automobile without a reasonable belief that the person is entitled to do so;
- (c) so as to inure directly or indirectly to the benefit of any worker's compensation or disability benefits carrier or any person or organization qualifying as a self-insurer under any worker's compensation or disability benefits law or any similar law;
- (d) to any claim alleging punitive or exemplary damages against the owner or operator of an underinsured motor vehicle or to the payment of any award, finding, verdict or judgment against the owner or operator of an underinsured motor vehicle for punitive or exemplary damages;
- (e) if Uninsured Motorist Coverage -PART II applies to the accident;
- (f) while any covered automobile is in the control of an excluded operator;
- (g) to any insured while occupying a vehicle the insured owns which is insured for this Underinsured Motorist Coverage under another policy; or
- (h) to bodily injury of an insured while occupying a motor vehicle owned by, or furnished or available for the regular use of the insured, a resident spouse or resident relative, if that motor vehicle is not described in this policy under which claim in made or is not a newly acquired or replacement automobile covered under the terms of this policy.

**Limits of Liability.**

(a) The limit of Liability as stated in the Declarations for Underinsured Motorist Coverage as applicable to "each person" is the maximum limit of the Company's liability for all damages, including damages for care and loss of service and loss of consortium, arising out of bodily injury sustained by any one person as the result of any one accident Subject to this limit for "each person", the maximum limit of liability stated in the Declarations as applicable to "each accident" for Underinsured Motorists Coverage is the maximum limit of the Company's liability for all damages including damages for care and loss of services and loss of consortium arising out of bodily injury sustained by two or more persons as the result of any one accident.

Therefore, these limits of liability for this E Underinsured Motorist Coverage' are the most the Company will pay under this coverage regardless of the number of:

- (1) insureds;
- (2) claims made or suits brought on account of bodily injury or property damage;
- (3) automobiles or separated itemizations of premiums stated in the Declarations; or
- (4) automobiles involved in the accident.

The limits for any coverage for automobile under this policy may not be aggregated with the limits for any similar coverage, whether provided by the IL-PL 04-2015

Company or another insurer, applying to other motor vehicles, for purposes of determining the total limit of insurance coverage available for bodily injury suffered by a person in any one accident. Therefore, the total limit of liability under all the policies, whether provided by the Company or another insurer shall not exceed the highest applicable limit of liability under any one policy.

(b) The limit of liability for "E Underinsured Motorist Coverage - PART II" shall be reduced by all sums paid or payable to or for the insured because of the bodily injury by or on behalf of persons or organizations who may be legally responsible.

(c) Any amounts otherwise payable for damages under this "E Underinsured Motorist Coverage -PART III" shall be reduced by all sums paid or payable to or for the insured because of the bodily injury under any worker's compensation law, disability benefits law or any similar law, except for the insured's social security benefits.

(d) Any payment under this "E Underinsured Motorist Coverage - PART III" to or for any insured shall be reduced by the amount of damages which the insured may be entitled to recover from any person insured under Coverage A of Part I.

(e) The Company shall not be obligated to pay under this "E Underinsured Motorist Coverage -PART II" that part of the damages which the insured may be entitled to recover from the owner or operator of an underinsured motor vehicle which represents expenses for medical services paid or payable under any automobile medical payments coverage which also includes all sums paid under Coverage F of Part IV of this policy.

(f) The Company shall not be obligated to make payment under this "E Underinsured Motorist Coverage - Part III" until the limits of liability or portion thereof under all bodily injury liability insurance policies applicable to the underinsured motor vehicle and its operators have been partially or fully exhausted by payment of judgment or settlement. A judgment or settlement of the bodily injury claim in an amount less than the limits of liability of the bodily injury coverages applicable to the claim shall not preclude the claimant from making an underinsured motorist claim under this underinsured motorist coverage. Any such provision shall be inapplicable if the insured, or the legal representative of the insured, and the Company agree that the insured has suffered bodily injury or death as the result of the negligent operation, maintenance, or use of an underinsured motor vehicle and, without arbitration, agree also on the amount of damages that the insured is legally entitled to collect. The maximum amount payable pursuant to such an underinsured motor vehicle insurance settlement agreement shall not exceed the amount by which the limits of the underinsured motorist coverage exceed the limits of the bodily injury liability insurance of the owner or operator of the underinsured motor vehicle. Any such agreement shall be final as to the amount due and shall be binding upon both the insured and the company regardless of the amount of any judgment, or any settlement reached between any insured and the person or persons responsible for the accident. No such settlement agreement shall be concluded unless: (i) the insured has complied with all other applicable policy terms and conditions; and (ii) before the conclusion of the settlement agreement, the insured has filed suit against the underinsured motor vehicle owner or operator and has not abandoned the suit, or settled the suit without preserving the rights of the Company in the manner described in 215 ILCS 5/143a-2(6) which states: "Subrogation against underinsured motorists. No insurer shall exercise any right of subrogation under a policy providing additional uninsured motorist coverage against an underinsured motorist where the insurer has been provided with written notice in advance of a settlement between its insured and the underinsured motorist and the insurer fails to advance a payment to the insured, in an amount equal to the tentative settlement, within 30 days following receipt of such notice."

(g) The limits of liability for this "E Underinsured Motorist Coverage" shall be the limits of such coverage, less those amounts actually recovered under the applicable bodily injury insurance policies, bonds or other security maintained on the underinsured motor vehicle. However, the maximum amount payable by the Company shall not exceed the amount by which the limits of this underinsured motorist coverage exceeds the limits of the bodily injury liability insurance of the owner or operator of the underinsured motor vehicle.

**Other Insurance.** With respect to bodily injury to an insured while occupying a motor vehicle not owned by the named insured, the insurance under Part III shall apply only as excess insurance over any other similar insurance available to such insured and applicable to such motor vehicle as primary insurance, then this insurance shall apply only in the amount by which the limit of liability for Part III exceeds the applicable of liability of such other insurance.

Except as provided in the foregoing paragraph, if the insured has other similar insurance available and applicable to the accident, the damages shall be deemed not to exceed the higher of the applicable limits of liability of this insurance and such other insurance, and the Company shall not be liable for a greater proportion of any loss to which Part III applies than the limit of liability hereunder bears to the

sum of the applicable limits of liability of this insurance and such other insurance.

**Arbitration.** If any person making claim hereunder and the Company do not agree that such person is legally entitled to recover damages from the owner or operator of an underinsured motor vehicle because of bodily injury to an insured or do not agree as to the amount payable hereunder, then these matters shall be submitted to arbitration. Upon the insured demanding arbitration and selecting an arbitrator as required under the terms hereof in writing, the Company shall select an arbitrator and the two arbitrators so named shall select a third arbitrator. If such arbitrators are not selected within 45 days from the receipt of such written request, either party may request the arbitration be submitted to the American Arbitration Association. In the event the two selected arbitrators cannot agree upon a third arbitrator, either party may petition any Judge in any court of record in the County and State in which the arbitration is pending to select a third arbitrator upon Notice of Motion to the other party or their attorney, if applicable, and without the necessity of filing a law suit or serving the other party with process. The arbitrators shall then hear and determine the questions in dispute and except to the extent herein provided, the decision in writing of any two arbitrators shall be binding upon the parties. All arbitration hearings under this policy, including both the tripartite panel and the American Arbitration Association, shall be conducted in the County and State in which the insured resides and in accordance with the usual rules governing procedure and admission of evidence in courts of law of that County and not in accordance with any court mandated arbitration or mediation rules. It is agreed that the arbitrator(s) shall not enter an award in excess of the applicable policy limits, and, if an award is entered in excess of the applicable policy limits then that portion of the award which exceeds the policy limits is void and not binding on either the insured or the company. Each party will pay the expenses it incurs for its attorney's fees and its witnesses' fees. Each party will pay the reasonable expense fees of its selected arbitrator and will share equally the reasonable fees of the third arbitrator.

**Trust Agreement.** In the event of payment to any person under Part III:

- (a) the Company shall be entitled to the extent of such payment to the proceeds of any settlement or judgment resulting from the exercise of any rights of recovery of such person against any person or organization legally responsible for the property damage or bodily injury for which the payment is made, including the proceeds recoverable from the assets of any insolvent insurer;
  - (b) such person shall hold in trust for the benefit of the Company all rights of recovery which he shall have against any other person or organization because of the damages which are the subject of claim made under Part III;
  - (c) such person shall do whatever is proper to secure such rights and shall do nothing after loss to prejudice such rights;
  - (d) if requested in writing by the Company or its representative, such person shall take, through any representative designated by the Company, such actions as may be necessary or appropriate to recover such payment as damages from any other person or organization, such action to be taken in the name of such person; in the event of a recovery, the Company shall be reimbursed out of such recovery for expenses, costs and attorneys' fees incurred by it in connection therewith;
  - (e) such person shall execute and deliver to the Company such instruments and papers as may be appropriate to secure the rights and obligations of such person and the Company established by these provisions.
- Legal Action Against the Company Under This Part III.** No suit, action or arbitration proceedings for recovery of any claim may be brought against this Company until the insured has fully complied with all the terms of this policy. Further, any suit, action or arbitration will be barred unless commenced within two years after the date of the accident or within one year after the date of any judgment. Arbitration proceedings will not commence until this Company receives at the same time (1) the insured's written demand for arbitration and (2) the insured's written selection of an arbitrator.

#### PART IV – MEDICAL PAYMENTS COVERAGE

**F. Medical Payments Coverage.** To pay all reasonable expenses incurred within one year from the date of accident for necessary medical, surgical, X-ray and dental services, including prosthetic devices, and necessary ambulance, hospital, professional nursing and funeral services

**Division 1.** to or for the named insured and each relative who sustains bodily injury caused by accident, while occupying or through being struck by an automobile; or

**Division 2.** to or for any other person who sustains bodily injury caused by accident, while occupying:

- (a) the owned automobile, while being used by an insured; or
- (b) a non-owned automobile, if the bodily injury results from its operation by an insured provided no such payment shall be made unless the person to or for whom such payment is made shall have executed a written agreement that the amount of such payment shall (1) be applied toward the settlement of any claim or the satisfaction of any judgment for damages entered in his/her favor, (2) against any insured because of bodily injury arising out of an accident to which the Part I Liability applies.

**Definitions.** The definitions under Part I apply to Part IV.

**Exclusions.** This policy does not apply and does not provide coverage under Part IV -Medical Payments Coverage to bodily injury:

- (a) sustained while occupying (1) an automobile while used for a delivery purpose during the course of business or for other commercial purpose, or (2) any automobile while located for use as a residence or premises;
- (b) sustained by the named insured or a relative (1) while occupying an automobile owned by or furnished for the regular use of either the named insured or any relative, other than an automobile defined herein as an "owned automobile", or (2) while occupying or as a result of being struck by (i) a motor vehicle or other equipment designed for use principally off public roads while not upon public roads, or (ii) a vehicle operated on rails or crawler-treads;
- (c) sustained by any person other than the named insured or a relative, resulting from use of (1) a non-owned automobile while used in the automobile business, or (2) a non-owned automobile in any other business or occupation except operation or occupancy of private passenger automobile by the named insured or by his/her private chauffeur or domestic servant or a trailer used therewith or with an owned automobile;
- (d) sustained by any person who is employed in the automobile business, if the accident arises out of the operation thereof and if benefits therefor are in whole or in part either payable or required to be provided under any worker's compensation law;
- (e) from loss due to war;

- (f) to the extent any medical expense is paid or payable to or on behalf of the injured person under the provisions of any other (i) insurance affording benefits for medical expenses, (ii) individual, blanket group accident, disability or hospitalization insurance, (iii) medical or surgical reimbursement plan, or (iv) worker's compensation or disability benefits law or any similar law;
- (g) resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any person or organization;
- (h) arising out of the operation of any automobile designed for racing while being tested, repaired or serviced, or to any automobile while used, operated, manipulated or maintained in any impromptu, prearranged or organized race or speed test, including "hot rod" or "stock car" racing;
- (i) while any automobile is in the control of an excluded operator;
- (j) to any person using an automobile without a reasonable belief that the person is entitled to do so.

**Limits of Liability.** The limit of liability for this Medical Payments Coverage as stated in the Declarations as applicable to "each person" is the maximum limit of the Company's liability for all expenses incurred by or on behalf of each person who sustains bodily injury as the result of any one accident. Therefore, this limit of liability for this medical payments coverage is the most the Company will pay under this coverage regardless of the number of:

- (1) insureds;
- (2) claims made or suits brought on account of bodily injury;
- (3) automobiles or separated itemizations of premium stated in the Declarations; or
- (4) automobiles involved in the accident.

The limits for any coverage for any automobile under this policy may not be aggregated with the limits for any similar coverage, whether provided by the Company or another insurer, applying to other motor vehicles, for purposes of determining the total limit of insurance coverage available for bodily injury suffered by a person in any one accident. Therefore, the total limit of liability under all the policies, whether provided by the Company or another insurer shall not exceed the highest applicable limit of liability under any one policy.

**Other Insurance.** If there is other automobile medical payments insurance against a loss covered by Part IV of this policy, the Company shall not be liable under this policy for a greater proportion of such loss than the applicable limit of liability stated in the Declarations bears to the highest applicable limit of liability of any valid and collectible automobile medical payments insurance; provided, however, the insurance with respect to a temporary substitute automobile or non-owned automobile shall be excess insurance over any other valid and collectible

automobile medical payments insurance.

**Legal Action Against the Company Under This Part IV.** No suit or action for recovery of any claim may be brought against this Company until the named insured, relative, or any other person has fully complied with all the terms of this

policy. Further, any suit or action will be barred unless commenced within two years after the date of the accident.

## PART V — PHYSICAL DAMAGE COVERAGE

**G -Comprehensive Coverage** (excluding Collision). At the Company's option to have repaired or to pay for loss caused other than by collision to the owned automobile or to a non-owned automobile but only for the amount of each such loss in excess of the deductible amount stated in the Declarations as applicable hereto. For the purpose of this coverage, breakage of glass and loss caused by missiles, falling objects, fire, theft or larceny, explosion, earthquake, windstorm, hail, war, flood, malicious mischief or vandalism, riot or civil commotion shall not be deemed to be loss caused by collision.

**Supplementary Payments.** In addition to the applicable limit of liability:

(a) to reimburse the insured for transportation expenses not exceeding \$10 per day or totaling more than \$150 incurred during the period commencing 72 hours after a theft covered by this policy of the entire automobile has been reported to the Company and the police, and terminating on the date the whereabouts of the automobile becomes known to the named insured or Company or on such earlier date as the Company tenders settlement for such theft;

(b) to pay general average and salvage charges for which the insured becomes legally liable as to the automobile being transported.

**H -Collision Coverage.** At the Company's option to have repaired or to pay for loss caused by collision to the owned automobile or to a non owned automobile but only for the amount of each such loss in excess of the deductible amount stated in the Declarations as applicable hereto.

**I -Towing and Labor Costs Coverage.** To pay for towing and labor costs necessitated by the disablement of the owned automobile or of any non-owned automobile, provided the labor is performed at the place of disablement.

**J - Rental Reimbursement - Collision Coverage.** It is agreed commencing after direct or accidental loss or damage to the insured automobile (hereinafter called loss), caused by collision of the automobile which is timely reported to the Company and covered by the Company, the Company will reimburse the insured for the rental fee expense incurred with a maximum daily reimbursement benefit as specified on the Declarations for a maximum period of fifteen (15) days (excluding mileage charge) for the rental of a substitute automobile while the insured automobile is in the custody of a licensed business, garage or facility for repairs.

### Exclusions.

#### Rental Reimbursement Does Not Apply:

(1) if a collision occurs while any driver of the insured automobile is intoxicated or under the influence of any narcotic unless administered at the advice of a physician;

(2) if a collision occurs while the automobile is rented by or on behalf of insured; or (3) if the automobile is in control of an excluded operator.

**1. Reimbursement:** Reimbursement is limited to such expenses incurred during a period commencing at 12:01 AM on the day following the date the named insured delivers the owned automobile to the garage for repairs.

**2. Coverage Terminates:** Coverage terminates on the date of reasonably satisfactory completion of repairs or the date the Company and the named insured agree the automobile is a total loss but in no event later than 12:01 AM of the fifteenth day including the first date of reimbursement.

**Payment of Loss.** At the Company's option, the Company may pay to the insured for loss in money or provide a substitute form of transportation. In no event shall a claim for rental reimbursement be accepted by the Company unless a verified, itemized statement of rental charges is supplied by the insured within thirty (30) days after the date of loss under Coverage J from a licensed or recognized automobile rental agency or business. This insurance is applicable in addition to any other valid or collectible collision insurance available to the insured.

**Definitions.** The definitions in Part I, except the definitions of "insured" apply to Part V and under Part V:

"insured" means (a) with respect to the owned automobile (1) the named insured and (2) any person or organization, other than a person or organization engaged in the automobile business or as a carrier or as the bailee for hire, maintaining, using or having custody of said automobile with the permission of the named insured; (b) with respect to a non-owned automobile, the named insured and any relative provided the actual use thereof is with the permission of the owner;

"loss" means direct and accidental loss of or damage to the automobile, including

its equipment;

"collision" means collision of an automobile covered by this policy with another object or with a vehicle to which it is attached or by upset of such automobile;

"forcible entry" means entry by actual force and violence evidenced by visible marks on the exterior of the automobile or the premises on which the automobile is garaged at the point of entry;

"equipment" means the standard or optional equipment which is available from the manufacturer for that make, model, and model year of automobile and was permanently installed in the automobile in the place designed by the manufacturer at the time of original sale or inception of this policy.

**Exclusions.** This policy does not apply and does not provide coverage under Part V:

(a) to any automobile while used for a delivery purpose during the course of business or for any commercial purpose;

(b) to loss of equipment which is not available from the manufacturer of the automobile named in the policy for that make, model, and model year;

(c) to loss of equipment which is available from the manufacturer of the automobile named in the policy for that make, model, and model year, but which is not permanently installed in the dash or console opening specified by the manufacturer of the automobile for the installation of such equipment;

(d) to loss to any automobile arising out of its use by the insured in the automobile business;

(e) to loss to any automobile owned by the named insured and not described in this policy;

(f) to damage which is due and confined to wear and tear, freezing, mechanical or electrical breakdown or failure, unless such damage results from a theft covered by this policy;

(g) to tires, unless damaged by fire, malicious mischief, vandalism, stolen or unless the loss is coincident with and from the same cause as other loss covered by this policy;

(h) to loss due to radioactive contamination;

(i) under Coverage H of Part V, to breakage of glass if insurance with respect to such breakage is otherwise afforded;

(j) to loss to any automobile designed for racing while being tested, repaired or serviced or to any automobile used, operated, manipulated or maintained in any impromptu, prearranged or organized race or speed test, including "hot rod" or "stock car" racing;

(k) to loss of or damage to any device or instrument designed for the recording, reproduction, receiving, or transmittal of sound, radio waves, microwaves or television signals unless such device or instrument is permanently installed in the dash or console opening specified by the manufacturer of the automobile for the installation of such equipment;

(l) to loss of or damage to any tape, wire, record disc or other medium for use with any device or instrument designed for the recording, reproduction, or recording and reproduction of sound;

(m) to loss with respect to an automobile, ownership of which is acquired by the named insured during the policy period if the named insured has not notified the Company in writing within 30 days of such acquisition of his/her decision to make Part V - Physical Damage Coverage of this policy applicable to such automobile;

(n) to loss due to theft under Coverage G of Part V if evidence exists that forcible entry was not required to gain access to the automobile;

(o) to loss to any custom furnishings or equipment in or upon any automobile including, but not limited to, special carpeting, insulation, furniture, bars, television receivers, facilities for cooking or sleeping, height-extending roofs, custom murals, custom paint or other decals or graphics;

(p) to damage which is either expected or intended by the insured, except for damage incurred by an innocent co-insured who did not cooperate or contribute to the loss, if the loss arose out of a pattern of criminal domestic violence and the perpetrator of the loss is criminally prosecuted for the act causing the loss;

(q) to any loss arising out of or during use of an automobile for the transportation of hazardous substance or flammable liquid;

(r) to loss due to war;



- (s) to loss due to theft if the keys to the automobile were left within the automobile or if evidence indicates the ignition wiring was not altered to allow the operation of the automobile without keys;
- (t) to loss to any trailer;
- (u) to loss due to confiscation, towing or impounding by a duly constituted government or civil authority, or damages incurred during repossession by loss payee or its agent;
- (v) to loss resulting from the alteration of an automobile beyond manufacturer specifications; or
- (w) while an automobile is in control of an operator excluded by endorsement.

**Limits of Liability.** The Company's liability for all losses under Part V shall not

exceed the least of the following:

- (a) the actual cash value of stolen or damaged property or part thereof at the time of the loss;
- (b) the amount necessary to repair the damaged property at the time of the loss;
- (c) the amount necessary to replace the value of the stolen or damaged property at the time of the loss with like kind and quality property less depreciation; or
- (d) the actual cash value of the stolen or damaged property less deductible and salvage value on retained vehicles nine (9) model years or older.

**Other Insurance.** This insurance shall be excess insurance over any other collectible insurance.

## PART VI - CONDITIONS

(Unless otherwise noted, Conditions apply to all Parts)

**1. Policy Period, Territory.** This policy applies only to accidents and losses during the policy period, as stated in the Declarations, while the automobile is within the United States of America, its territories or possessions, or Canada or is being transported between ports thereof. This policy may be renewed for successive policy periods by payment of the required premium to the Company on or before the expiration date of each policy period. If the premium is not paid when due, the policy shall terminate as of that date and such date shall be the end of the policy period. Premium shall be computed in accordance with the manuals currently in use by the Company. Each policy period shall begin and end at 12:01 AM, standard time at the address of the named insured.

**2. Premium.** If the named insured disposes of an automobile, he/she shall inform the Company in writing within 30 days of such change. If the named insured acquires ownership of an additional or replacement automobile, he/she shall inform the Company in writing within 30 days following acquisition of his/her decision to make this and no other policy issued by the Company applicable to such owned automobile. Any premium adjustment necessary shall be effective as of the date of such change or acquisition in accordance with the manuals currently in use by the Company. The named insured shall, upon request, furnish reasonable proof of the number of such automobiles or trailers and a description thereof.

If, at any time, the Company becomes aware of any operator residing in the insured's household, "resident operator" or any "regular operator" of an insured automobile, other than an excluded operator who is not named on the declaration page as a named insured or operator and the inclusion of that person as a named insured or operator under the policy would require a higher rate class, the policy will at the Company's option be declared null and void or be endorsed to the correct rate class effective;

- (1) on the inception date of the policy if such person was a "resident operator" or "regular operator" as of the inception date of the policy; or
- (2) on the date such person became a "resident operator" or "regular operator" if such person became a "resident operator" or "regular operator" during the policy period, and the named insured will be liable for the appropriate premium surcharged 200% less the premium originally charged pro-rata from the date such person became a "resident operator" or "regular operator". Such retroactive premium will not exceed the cost of repair or replacement in the event of a collision or comprehensive loss and, in the event of a total loss will be deducted from the total loss settlement.

**For purposes of Condition 2,**

"resident operator" means any person who resides in the insured's household and who at any time during the policy period uses or operates an insured automobile, and "regular operator" means any person:

- 1. who has been provided with a key to use the automobile on more than two consecutive days; or
- 2. who has driven the automobile more than five times within any thirty day period; or
- 3. who the named insured has given express or implied permission to operate the automobile at will; or
- 4. who has unrestricted use of the automobile; or
- 5. whose use of the automobile has been determined by the Courts of Illinois to be regular and frequent.

**3. Notice.** In the event of an accident or loss, written notice containing particulars sufficient to identify the insured and also reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and address of the injured and of available witnesses, shall be given by or on behalf of the insured directly to the Company as soon as practicable. If claim is made or suit is brought against an insured, he/she shall immediately forward to the Company

every demand, notice, summons or other process received by him/her, his/her representative or agent. The Company will not be obligated to pay, and shall not pay under Part I, unless the Company received actual notice of a lawsuit before a judgment had been entered in said suit.

If, before the Company makes a payment of loss under Parts I, II, III, IV or V, the insured or his/her legal representative shall institute any legal action for bodily injury or property damage against any person or organization legally responsible for the use of an automobile involved in the accident, a copy of the summons and complaint or other process served in connection with such legal action shall be forwarded immediately to the Company by the insured or his/her legal representative.

All notices which may be required by this policy shall be in writing and shall be served personally or by certified mail, return receipt requested. For the purpose of all time limitations, notice shall be deemed to have been given on the date when so placed in the United States mail, postage prepaid. Notice shall be given as follows:

To The Company  
Mendakota Casualty Company  
(Served by KAI Advantage Auto, Inc.)  
150 E. Pierce Road, Suite 600  
Itasca, IL 60143

To The Insured(s):

Notice shall be given to the person(s) designated as the "Named Insured(s)" on the Declarations Page which is a part of this policy as issued, at the last known address for the "named insured".

**4. Fraud and Misrepresentation.** Statements contained in the application are deemed to be representations relied upon by the Company in issuing this policy. In the event that any representation contained in the application is false, misleading or materially affects the acceptance or rating of this risk by the Company, by either direct misrepresentation, omission, concealment of facts or incorrect statements, then coverage for the accident or loss in question shall not be provided by the Company and/or this policy shall be null and void and of no benefit whatsoever from its inception. In the event that any representation contained in any notification of change is false, misleading or materially affects the acceptance or rating of this risk by the Company, by either direct misrepresentation, omission, concealment of facts or incorrect statements, then coverage for the accident or loss in question shall not be provided by the Company and/or this policy shall be null and void and of no benefit whatsoever from the effective date of change. This paragraph shall also apply to misstatement of use and omissions of fact. This policy shall not provide coverage for any insured who has made fraudulent statements or engaged in fraudulent conduct in connection with an accident or loss for which coverage is sought under this policy.

Further, this policy or policy renewal shall not be rescinded after the policy has been in effect for one year or one policy term, whichever is less.

**5. Two or More Automobiles.** When two or more automobiles are insured hereunder, an automobile and a trailer attached thereto shall be held to be one automobile as respects limits of liability under Parts I, II, III and IV of this policy.

**6. Assistance and Cooperation of the Insured.** The insured shall cooperate with the Company and, upon the Company's request or through attorneys selected by the Company to represent the insured, attend hearings and trials; assist in making settlements, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of any legal proceedings in connection with the subject matter of this insurance. The insured shall not, except at his/her own cost, voluntarily make any payment, assume any obligation or incur any

expense other than for such immediate medical and surgical relief to others as shall be imperative at the time of accident.

The insured shall immediately notify the Company and any attorneys selected by the Company to represent the insured, of any change of his/her address or residence during the pendency of any suit against the insured.

After the notice of claim under any part of this policy, the Company may require the insured to take such actions as may be necessary or appropriate to preserve his/her right to recover damages from any person or organization alleged to be legally responsible for the bodily injury; and in any action against the Company, the Company may require the insured to join such person or organization as a party defendant. The Company shall reimburse the insured for court costs, jury fees and sheriff's fees arising from this action.

**7. Action Against Company - Part I.** No action shall lie against the Company unless, as a condition precedent thereto, the insured shall have fully complied with all terms of this policy, nor until the amount of the insured's obligation to pay shall have been determined either by final judgment against the insured after actual trial or by written agreement of the insured, the claimant and the Company. Any person or organization or the legal representative thereof who has secured such final judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. No person or organization shall have any right under this policy to join the Company as a party to any action against the insured to determine the insured's liability, nor shall the Company be impleaded by the insured or his/her legal representative. Bankruptcy or insolvency of the insured or the insured's estate shall not relieve the Company of any of its obligations hereunder.

**Parts II, III, IV and V.** No action shall lie against the Company unless, as a condition precedent thereof, there shall have been full compliance with all the terms of this policy nor under Part V until 30 days after proof of loss is filed and the amount of loss is determined as provided in this policy.

**8. Medical Report; Proof and Payment of Claim -Parts II, III and IV.** As soon as practicable any injured person or someone on his/her behalf making claim shall give to the Company written proof, under oath if required, including full particulars of the accident or loss and the nature and extent of the injuries, treatment, and other details entering into the determination of the amount payable.

The Company may pay the injured person or any person or organization rendering the services and such payment shall reduce the amount payable hereunder for injury, but such payment shall not constitute an admission of liability of any person or of the Company.

If required, the insured and every other person making claim shall submit to examinations under oath by any person named by the Company and subscribe the same, as often as may reasonably be required. Proof of claim shall be made upon forms furnished by the Company, unless the Company shall have failed to furnish such forms within 15 days after receiving notice of claim.

The injured person shall submit to physical examinations by physicians selected by the Company when and as often as the Company may reasonably require and he/she, or in the event of his/her incapacity, his/her legal representative, or in the event of his/her death, his/her legal representative or the person or persons entitled to sue therefore, shall upon each request from the Company execute authorization to enable the Company to obtain medical reports and copies of any and all records.

**9. Insured Duties in Event of Loss - Part V.** Physical Damage In the event of loss the insured must:

(a) protect the automobile, whether or not the loss is covered by this policy, and any further loss due to the insured's failure to protect shall not be recoverable under this policy; reasonable expenses incurred in affording such protection shall be deemed incurred at the Company's request;

(b) report the loss to the company within 31 days after loss, and within 60 days thereafter file with the Company his/her sworn proof of loss in such form and including such information as the Company may reasonably require; and

(c) upon the Company's request, exhibit the damaged property prior to its repair or disposition and submit to examination under oath.

(d) in the event of theft, report the loss promptly or as soon as practicable after the insured is made aware of such theft to police, peace, or judicial officers, or the Commissioner of Motor Vehicles.

**10. Appraisal - Part V.** If the insured and the Company fail to agree as to the amount of loss, either may, within sixty days after proof of loss is filed, at the same time (1) demand in writing an appraisal of the loss and (2) state in writing the name of their qualified appraiser. In such event either party may select a qualified appraiser, and the appraisers shall select a qualified and disinterested umpire. The appraisers shall state separately the actual cash value and the amount of loss and failing to agree shall submit their differences to the umpire. An award in writing of any two shall determine the amount of loss. The insured and the Company shall each pay his/her chosen appraiser and shall bear equally any other expenses of the appraisal and umpire. The Company shall not be held to

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have waived any of its rights by any act relating to appraisal.

**11. Payment of Loss.** Any amount due is payable (a) to the insured, or (b) if the insured is a minor to his/her parent or guardian, or (c) if the insured is deceased to his/her surviving spouse, otherwise (d) to a person authorized by court order to receive such payment or to a person legally entitled to recover the damages which the payment represents; provided, the Company may at its option pay any amount due in accordance with provision (d) hereof.

**Part V.** The Company may pay for the loss in money; or may repair or replace the damaged or stolen property; or may, at any time before the loss is paid or the property is so replaced, at its expense return any stolen property to the named insured, or at its option to the address shown in the Declarations, with payment for any resultant damage thereto; or may take all or such part of the property at the agreed or appraised value but there shall be no abandonment to the Company. The Company may settle any claim for loss either with the insured or the owner of the property.

**12. No Benefit to Bailee - Part V.** The insurance afforded by this policy shall not insure directly or indirectly to the benefit of any carrier or other bailee for hire which is liable for loss to the automobile.

**13. Subrogation.** In the event of any payments under this policy, the Company shall be subrogated to all the rights of recovery therefore which the insured, an injured person or any other person receiving such payment may have against any person or organization and they shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. Such person shall do nothing after loss to prejudice such rights. In the event of any payment under Part III -the Underinsured Motorists Coverage, the Company shall not exercise any right of subrogation under a policy providing additional Uninsured Motorist Coverage against an underinsured motorist where the Company has been provided with written notice in advance of a settlement between its insured and the underinsured motorist and the Company fails to advance a payment to the insured, in an amount equal to the tentative settlement, within 30 days following a receipt of such notice.

**14. Changes.** The terms of this policy shall not be waived or changed, except by endorsement issued by the Company to form a part of this policy. Notice to or knowledge possessed by any person shall not effect a waiver or a change in any part of this policy or stop the Company from asserting any right under the terms of this policy.

**15. Assignment.** Assignment of interest under this policy shall not bind the Company until its consent is endorsed hereon; if, however, the named insured, or his/her spouse, if a resident of the same household, shall die during the policy period, this policy shall cover:

(1) the survivor as named insured, (2) his/her legal representative as named insured but only while acting within the scope of his/her duties as such, (3) any person having proper temporary custody of an owned automobile, as an insured, until the appointment and qualification of such legal representative, and (4) under Division 1 of Part IV any person who was a relative at the time of such death.

**16. Cancellation.** This policy may be canceled by the named insured or by a premium finance company by surrender thereof to the Company or any of its authorized agents or by mailing to the Company written notice stating when thereafter the cancellation shall be effective.

This policy may be canceled by the Company by mailing to the named insured and the loss payee at their last known addresses written notice stating when not less than 30 days thereafter such cancellation shall be effective, however, where cancellation is for non-payment of premiums at least ten (10) days notice must be given. The Company shall not exercise its right to cancel the policy after it has been in effect for sixty (60) days or in any subsequent renewal period, except for the reasons set forth in Section 5/143.19 of the Illinois Insurance Code.

The Company shall not fail to renew any policy of insurance unless it shall mail notice of such to the named insured at least thirty (30) days prior to the date of expiration. This provision shall not apply if the Company has manifested its willingness to renew directly to the named insured or in the case of non-payment. If the Company does not issue a non-renewal notice and renewal is not offered, this policy shall terminate only on the effective date of any similar insurance procured by the insured with respect to the same subject or location designated in both policies.

Renewal of a policy does not constitute a waiver or estoppel with respect to grounds for cancellation which existed before the effective date of such renewal. After this policy has been effective or renewed for 5 or more years, the Company shall not exercise its right of non-renewal, except for the reasons set forth in Section 5/143.19.1 of the Illinois Insurance Code.

All notices of cancellation or non-renewal shall include a specific explanation of the reason or reasons for cancellation or non-renewal. The mailing of notice as aforesaid on a recognized U.S. Post Office form or a form acceptable to the U.S. Post Office or other commercial mail delivery service shall be sufficient proof of notice, and a copy of such notice shall be sent to the insured's producer of record

at the last mailing address known to the Company.

In the event of the cancellation of this policy, earned premiums shall be computed pro-rata to the date of cancellation. Any refund of the premium shall be without prejudice to any claim arising prior to the cancellation, and such refund shall be made to the named insured's producer of record by the Company within 30 days from:

- (1) the date of the notice of cancellation by the Company, or
- (2) the date the Company receives the request for cancellation from the named insured or its representatives, but payment or tender of unearned premium is not a condition of cancellation.

**17. Declarations.** By acceptance of this policy, the named insured agrees that the statements and representations contained in the Application have been made by him/her or on his/her behalf and said statements and representations and the statements in the Application and in any subsequent Application or questionnaire accepted by the Company are offered as an inducement to the Company to issue or continue this policy and this policy is issued and continued in reliance upon the truth of such statements and representations and this policy embodies all agreements existing between himself/herself and the Company relating to this insurance.

**18. Excluded Driver.** If at the time of an accident a person is identified on the Declarations of this policy as an Excluded Driver or if that person is identified on an endorsement to the policy in effect at the time of the accident, and if the accident involves operation of any motor vehicle by such person, then, notwithstanding any other provision of this policy, no coverage of any kind under this policy is owing or payable by the Company to any person with respect to such accident and the Company is not obligated to defend any person in any legal action concerning the accident.

**19. LOSS PAYEE.** Loss under this policy shall be payable as interest may appear to the person or organization named in the Declarations as loss payee, provided this insurance as to such interest for any bailment lessor, conditional vendor, mortgagee or assignee of bailment lessor, conditional vendor or mortgagee (herein called the lien holder) has not been invalidated by any act or neglect of the insured owner of the covered automobile nor by any change in the title of ownership of the same. Further, in the event of conversion, embezzlement or

secretion by the insured owner of the covered automobile, interest under the said bailment lease, conditional sale, mortgage or other encumbrance is not covered under this policy, unless specifically insured against and premium paid therefor; and provided also, in case the named insured has neglected to pay any premium due under this policy, the lien holder has paid the same.

The lien holder shall notify the Company of any change of ownership or increase of hazard which shall come to the knowledge of said lien holder and, if accepted by the Company, it shall be endorsed herein and the lien holder shall, on demand, pay the premium for any such increased hazard for the term of the use thereof; otherwise this policy shall be null and void. If this Company elects to cancel this policy at any time as provided by its terms, the Company shall notify the lien holder when not less than ten (10) days thereafter such cancellation shall be effective as to the interest of said lien holder therein and the company shall have the right, on like notice, to cancel this agreement. Should the insured fail to render Proof of Loss within the time granted in the conditions of this policy, the lien holder shall do so within sixty (60) days thereafter, in the form and in the manner as provided by this policy; and further, shall be subject to the provisions of this policy relating to appraisal and time of payment and of bringing suit. Whenever the Company shall pay the lien holder any sum for loss under this policy and shall claim that, as to the named insured, no liability therefor existed, the Company shall, to the extent of such payment, be thereupon legally subrogated to all the rights of the party to whom such payment shall be made, under securities held as collateral to the debt, or may at its option, pay to the lien holder the whole principal due or to grow due on the mortgage with interest, and shall thereupon receive a full assignment and transfer of the mortgage and of all such other securities; but no subrogation shall impair the right of the lien holder to recover the full amount of its claim.

The interest of the loss payee is protected by these provisions subject to all terms, conditions, and exclusions contained in this policy, which policy is available to the loss payee upon request.

IN WITNESS WHEREOF, the Company has caused this policy to be signed by its president and secretary, but this policy shall not be valid unless completed by the attachment hereto of a Declarations page issued by the Company.



PRESIDENT



SECRETARY

**Section 143c of the Illinois Insurance Codes requires notification of the following addresses:**

Mendakota Casualty Company  
Serviced by KAI Advantage Auto, Inc.  
150 E. Pierce Road, Suite 600  
Itasca, IL 60143  
Toll-Free Customer Service Hot-Line  
**1-800-287-2741**

Illinois Department of Insurance  
Consumer Services Section  
Springfield, IL 62767

IN COMPLIANCE WITH THE REQUIREMENTS OF THE FAIR CREDIT REPORTING ACT (PUBLIC LAW 91 -508), WE ADVISE THAT AS PART OF OUR ROUTINE PROCEDURE IN REVIEWING APPLICATIONS FOR INSURANCE OR RENEWALS OF INSURANCE POLICIES, THIS INSURANCE COMPANY MAY PROCURE AN INVESTIGATIVE CONSUMER REPORT INCLUDING INFORMATION AS TO THE CONSUMER'S CHARACTER, GENERAL REPUTATION, PERSONAL CHARACTERISTICS OR MODE OF LIVING, IF SUCH INSURANCE IS FOR AN INDIVIDUAL AND IS PRIMARILY FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES SUCH INFORMATION MAY, WITHOUT LIMITATION BE OBTAINED THROUGH PERSONAL INTERVIEWS WITH NEIGHBORS, FRIENDS OR OTHERS WITH WHOM THE CONSUMER IS ACQUAINTED.

**UPON WRITTEN REQUEST TO THIS INSURANCE COMPANY, MADE WITHIN A REASONABLE PERIOD OF TIME AFTER RECEIPT OF THIS NOTICE, THIS COMPANY WILL PROVIDE IN WRITING A COMPLETE AND ACCURATE DISCLOSURE OF THE NATURE AND SCOPE OF THE INVESTIGATION REQUESTED, IF ONE WAS REQUESTED, OR ADVISE THAT NONE WAS REQUESTED.**